

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
61 FORSYTH STREET, ATLANTA, GEORGIA 30303
EXPEDITED SPILL SETTLEMENT AGREEMENT

DOCKET NO. CWA-04-2005-5023

On: August 17, 2004

Time: 18:20

On: Or near 7855 King Road, King, Forsyth County, NC, Reynolds American, Inc. (Respondent) discharged approximately 300 gallons of oil in violation of Section 311(b)(3) of the Clean Water Act (the Act), as noted on the attached FINDINGS and ALLEGED VIOLATIONS FORM (Form), which is hereby incorporated by reference.

EPA finds the Respondent's conduct is subject to the discharge prohibition of Section 311(b)(3) of the Act, as described in that statute and further described by 40 CFR § 110.3. The Respondent admits being subject to Section 311(b)(3) and that EPA has jurisdiction over the Respondent and the Respondent's conduct as described in the form. Respondent does not contest the Findings in the Form, and waives any objections it may have to EPA's jurisdiction.

EPA is authorized to enter into this Expedited Settlement under the authority vested in the Administrator of EPA by Section 311(b)(6)(B)(i) of the Act, 33 U.S.C. § 1321(b)(6)(B)(i), as amended by the Oil Pollution Act of 1990, and by 40 CFR § 22.13(b). The parties enter into this Expedited Settlement in order to settle civil violations described in the Form for a penalty of \$500.00. Respondent consents to the assessment of this penalty.

This Expedited Settlement is also subject to the following terms and conditions: Respondent certifies, subject to civil and criminal penalties for making a false submission to the United States Government, that it has investigated the cause of the spill, it has cleaned up the spill pursuant to federal requirements at a cost of \$26,225.00, and it has taken corrective actions that will prevent future spills. The Respondent also by signature of this Settlement Agreement agrees to payment of the penalty assessed. Upon written execution of this Agreement Respondent shall submit payment within 7 days by certified check for \$500.00 payable to the "Oil Spill Liability Trust Fund". The check must also include EPA and the Docket of this case, CWA-04-2005-5023, and shall be mailed to "US Coast Guard, POB 100160, Atlanta, GA 30384". A copy of this check shall also be mailed to "Helen Scott, Emergency Response and Removal Branch, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street S.W. Atlanta, Georgia 30303-8960".

After this Expedited Settlement becomes effective, EPA will take no further action against the Respondent for the violations of Section 311(b)(3) of the Act described in the Form. However, EPA does not waive any rights to take any enforcement action for any other past, present, or future violations by the Respondent of Section 311(b)(3) of the Act or of any other federal statute or regulation. By its first signature, EPA ratifies the Findings and Alleged Violations set forth in the Form.

Upon signing and returning this Expedited Settlement to EPA, Respondent waives the opportunity for a hearing or appeal pursuant to Section 311 of the Act, and consents to EPA's approval of the Expedited Settlement without further notice.

This Expedited Settlement is binding on the parties signing below, and effective upon EPA's filing of the document with the Regional Hearing Clerk. If the Respondent does not sign and return this Expedited Settlement as presented within 30 days of the date of its receipt and submit payment of the assessed penalty, the proposed Expedited Settlement is withdrawn without prejudice to EPA's ability to file any other enforcement action for the violations identified in the Form.

APPROVED BY RESPONDENT:

(K. J. REYNOLDS TOBACCO COMPANY)
Name (print): RONALD H. MORGAN

Title (print): VP - ENGINEERING

Signature: Ronald H. Morgan *RM*

APPROVED BY EPA:

J. I. Palmer, Jr. Date: JUN - 2 2005
J. I. Palmer, Jr.
Regional Administrator

IT IS SO ORDERED:

Susan B. Schub Date: 6/13/05
Susan B. Schub
Regional Judicial Officer

6/15
7405631

ALLEGED CIVIL VIOLATIONS - DOCKET NO. CWA-04-2005-5023

1. Reynolds American, Inc., Respondent, is a corporation organized under the laws of North Carolina with a place of business located at 401 Main Street, Winston Salem, NC 27101-3804. The Respondent is a person within the meaning of Section 311(a)(7) of the Clean Water Act, 33 U.S.C. §1321(a)(7).
2. Respondent is the owner of an onshore facility within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. §1321(a)(10), which is located on R.J. Reynolds premises at 7855 King Road, King, Forsyth County, NC ('facility').
3. Section 311(b)(3) of the Act prohibits the discharge of oil into or upon the navigable waters of the United States or adjoining shorelines in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States.
4. For purposes of Section 311(b)(3) and (b)(4) of the Act, 33 U.S.C. §1321(b)(3) and (b)(4), discharges of oil into or upon the navigable waters of the United States in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States are defined in 40 C.F.R. §110.3 to include discharges of oil that (1) violate applicable water quality standards or, (2) cause a film or a sheen upon or discoloration of the surface of the water or adjoining shorelines or, (3) cause a sludge or emulsion to be deposited beneath the surface of the water or upon the adjoining shorelines.
5. On August 17, 2004, Respondent discharged approximately 300 gallons of oil as defined in Section 311(a)(1) of the Act, 33 U.S.C. §1321(a)(1), and 40 C.F.R. §110.1, from its facility into or upon a natural ditch which flows through an erosion and sedimentation pond into Bakers Creek tributary of Parker Creek tributary of Muddy Creek tributary of the Yadkin River and adjoining shorelines.
6. The natural ditch which flows through an erosion and sedimentation pond into Bakers Creek tributary of Parker Creek tributary of Muddy Creek tributary of the Yadkin River and the Yadkin River are "navigable water(s) of the United States" subject to the jurisdiction of Section 311 of the Act as defined in Section 502(7) of the Act, 33 U.S.C. §1362(7), and 40 C.F.R. §110.1.
7. Respondent's August 17, 2004 discharge of oil from its facility caused a sheen upon or discoloration of the surface of the natural ditch and adjacent shoreline or caused emulsion to be deposited beneath the surface, and therefore, was in a quantity that has been determined may be harmful under 40 C.F.R. §110.3, which implements Section 311(b)(3) and (b)(4) of the Act.

8. Respondent's August 17, 2004 discharge of oil from its facility into or upon the natural ditch and adjoining shorelines in a quantity that has been determined may be harmful under 40 C.F.R. §110.3 violated Section 311(b)(3) of the Act. Pursuant to Section 311(b)(6)(B)(i) of the Act, and 40 C.F.R. 19.4, the Respondent is liable for civil penalties of up to \$11,000 per violation, up to a maximum of \$27,500.